

1                                   **IN THE UNITED STATES DISTRICT COURT**  
2                                   **FOR THE EASTERN DISTRICT OF VIRGINIA**  
3                                   **NORFOLK DIVISION**

4 VIR2US, INC.,

5                                   Plaintiff,

6                                   v.

7 SOPHOS INC.; SOPHOS LIMITED;  
8 SOPHOS GROUP PLC; and INVINCEA,  
9 INC.,

10                                  Defendants.

**CIVIL ACTION NO.**

**JURY TRIAL DEMANDED**

11                                   **PLAINTIFF’S ORIGINAL COMPLAINT FOR BREACH OF CONTRACT**

12                   Plaintiff Vir2us, Inc. (“Vir2us” or “Plaintiff”), by and through its undersigned counsel,  
13 files this Original Complaint against Defendants Sophos Inc., Sophos Ltd., Sophos Group PLC  
14 (collectively, “Sophos”) and Invincea, Inc. (“Invincea”) (collectively, “Defendants”) as follows:

15                                   **NATURE OF THE ACTION**

16                   1.       This is a breach of contract action [REDACTED]

17 [REDACTED]  
18 [REDACTED]  
19 [REDACTED] that were the subject of a previous action in  
20 this District before the Honorable Henry Coke Morgan, Jr. (*Vir2us, Inc. v. Invincea, Inc. et al.*,  
21 No. 2:15-cv-162-HCM-LRL) (“The Patent Lawsuit”). [REDACTED]

22 [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED] Moreover, in the Order of Dismissal dismissing The Patent Lawsuit, Judge Morgan  
26 expressly retained jurisdiction to enforce the terms of the settlement. *See Vir2us, Inc. v. Invincea,*  
27 *Inc. et al.*, No. 2:15-cv-162-HCM-LRL, Dkt. 518 (E.D. Va. Jul. 22, 2016).

28                   2.       [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]  
10 [REDACTED]

11 3. In February 2017, Sophos announced that it would acquire Invincea. According to  
12 Sophos, Invincea's technology would be fully integrated into the Sophos endpoint protection  
13 portfolio. Sophos completed its acquisition of Invincea in or around March 2017.

14 4. On information and belief, Sophos continued Invincea's business operations  
15 following the acquisition. [REDACTED]

16 [REDACTED] Sophos also retained Invincea's  
17 office in Fairfax, and hired Invincea CEO Anup Ghosh and COO Norm Laudermilch for key  
18 leadership positions within Sophos.

19 5. On information and belief, Sophos did, as announced, integrate technology from  
20 Invincea's products—[REDACTED]  
21 [REDACTED]—into Sophos' flagship endpoint protection product (*e.g.*, Sophos' Intercept  
22 X). Sophos continued to sell and support Invincea's computer security products until around April  
23 2018. At that time—[REDACTED]  
24 [REDACTED]—Sophos announced the immediate end of sale  
25 for all Invincea-related products.

26 6. On information and belief, [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

1 [REDACTED]  
2 [REDACTED]  
3 [REDACTED]  
4 [REDACTED]  
5 [REDACTED]  
6 [REDACTED]

7 7. Vir2us has conferred with Sophos in an effort to resolve this contractual dispute  
8 short of litigation, [REDACTED]  
9 [REDACTED] Vir2us therefore files this Complaint, seeking *inter alia* specific  
10 performance and monetary damages.

11 **PARTIES**

12 8. Plaintiff Vir2us is a corporation duly organized and existing under the laws of the  
13 State of California, with its principal place of business in Petaluma, California. Vir2us is the  
14 owner of numerous patents [REDACTED]

15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]

19 9. Defendant Sophos Inc. is a Massachusetts corporation with its principal place of  
20 business at 3 Van De Graaff Drive, 2nd Floor, Burlington, Massachusetts 01803. On information  
21 and belief, Sophos Inc. is a wholly-owned subsidiary of Sophos Ltd. and is responsible for  
22 Sophos' operations in the United States. Sophos Inc. may be served by process through its  
23 Massachusetts Registered Agent: CT Corporation System, 155 Federal Street, Suite 700, Boston,  
24 Massachusetts 02110.

25 10. On information and belief, Defendant Sophos Ltd. is an Oxford, UK company  
26 having its principal place of business at The Pentagon, Abingdon Science Park, Abingdon OX14  
27 3YP. On information and belief Sophos Ltd. is a wholly-owned subsidiary of Sophos Group PLC.  
28 Pursuant to the Hague Service Convention, Sophos Ltd. may be served at The Pentagon,

1 Abingdon Science Park, Abingdon OX14 3YP through, among other means, international postal  
2 channels.

3 11. On information and belief, Defendant Sophos Group PLC is an Oxford, UK  
4 company having its principal place of business at The Pentagon, Abingdon Science Park,  
5 Abingdon, OX14 3YP. On information and belief Sophos Group, PLC is the parent company of  
6 Sophos Ltd., Sophos Inc. and Invincea. Pursuant to the Hague Service Convention, Sophos PLC  
7 may be served at The Pentagon, Abingdon Science Park, Abingdon OX14 3YP through, among  
8 other means, international postal channels.

9 12. Defendant Invincea, Inc. is a Delaware corporation with its principal place of  
10 business at 3975 University Drive, Suite 330, Fairfax, Virginia 22030. On information and belief,  
11 Invincea is a wholly-owned subsidiary of Sophos Inc. Invincea may be served by process through  
12 its Virginia Registered Agent: Anup Ghosh, 3975 University Drive #460, Fairfax, Virginia 22030.

### 13 JURISDICTION AND VENUE

14 13. [REDACTED]

15 [REDACTED]

16 [REDACTED]

17 [REDACTED]

18 [REDACTED]

19 14. [REDACTED]

20 Defendants are subject to personal jurisdiction in this District because, on information and belief,  
21 Defendants maintain continuous and systematic contacts within this District. For example, on  
22 information and belief, Invincea has its principal place of business in this District and regularly  
23 and systematically transacts business in the Commonwealth of Virginia, including selling and  
24 offering computer and network security products and services in Virginia. On information and  
25 belief, Sophos Inc. holds 100% of the shares of Invincea, and Sophos likewise regularly and  
26 systematically transacts business in the Commonwealth of Virginia, including by continuing the  
27 business operations of Invincea and by selling and offering computer and network security  
28 products and services in Virginia. Defendants have purposefully availed themselves of the

1 privilege of conducting business activities within the Commonwealth of Virginia.

2 15. [REDACTED] this  
3 Court has subject matter jurisdiction pursuant to 28 U.S.C. § 1332. On information belief, none of  
4 Defendants are citizens of California, the state in which Vir2us is incorporated and resides, and the  
5 amount in controversy exceeds \$75,000.

6 16. [REDACTED] venue is  
7 proper in this District pursuant to 28 U.S.C. § 1391(b), (c), and 1400(b) because, on information  
8 and belief, Defendants have conducted business in this District, Invincea has its principal place of  
9 business in this District, [REDACTED]

10 [REDACTED]  
11 [REDACTED] entitling Vir2us to relief.

## 12 **FACTUAL BACKGROUND**

13 17. Vir2us design, markets, and sells computer security software and services. Vir2us'  
14 current computer security software portfolio includes the Vir2us VMunity Platform software that  
15 is designed to, for example, provide security to individual users of computing devices, often  
16 referred to as network endpoints. The Vir2us VMunity Platform and its predecessors have been  
17 available for sale since on or about February 2012.

18 18. Vir2us owns an intellectual property portfolio that covers various aspects and  
19 methods of providing security for and repair of information appliances and computer systems from  
20 malicious software and computer viruses. Vir2us' intellectual property portfolio contains  
21 numerous issued patents, with additional patent applications pending.

### 22 ***The Patent Infringement Case*** [REDACTED]

23 19. On April 15, 2015, Vir2us filed a Complaint for Patent Infringement against  
24 Invincea, Inc. and Invincea Labs, LLC in this District. The Patent Lawsuit was assigned to the  
25 Honorable Henry Coke Morgan, Jr. in this District's Norfolk Division. Vir2us alleged that  
26 Invincea directly, indirectly, and willfully infringed certain claims of Vir2us' U.S. Patent Nos.  
27 7,392,541 and 7,536,598 by making, using, selling and offering to sell certain Invincea products,  
28 including Invincea FreeSpace, which Invincea later sold as Invincea X Endpoint – Spearphish

1 Protection.

2 20. On July 15, 2016, Vir2us and Invincea, as part of the settlement of The Patent  
3 Lawsuit, [REDACTED]

4 21. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]  
9 [REDACTED]

10 22. [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]  
17 [REDACTED]  
18 [REDACTED]  
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21 [REDACTED]  
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23 23. [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]  
27 [REDACTED]  
28 [REDACTED]

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***Sophos Acquires Invincea and Plans to Integrate Invincea Technology***

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25. On or around February 8, 2017, Sophos announced via a Sophos Press Release (attached hereto as Exhibit B) that it had entered into an agreement to acquire Invincea from its current shareholders for a cash consideration of \$100 million with a \$20 million earn-out.

26. According to Sophos, “Invincea’s flagship product X by Invincea uses deep learning neural networks and behavioral monitoring to detect previously unseen malware and stops attacks before damage occurs.” Sophos also announced that “[t]he Invincea machine learning malware detection and prevention technology will be fully integrated into the Sophos endpoint protection portfolio, further strengthening Sophos’ leadership in this fast-growing market.” The Sophos Press Release also stated that “[t]he Invincea endpoint security portfolio including X by Invincea [would] continue to be supported and sold by Invincea and available via Invincea’s network of registered partners.” According to Sophos, it would retain Invincea’s office in Fairfax with Invincea CEO Anup Ghosh and COO Norm Laudermilch joining Sophos in key leadership positions.

27. In another News Release (attached hereto as Exhibit C), Sophos characterized Invincea as “the superhero that takes our ensemble to the next level – the entity that adds neural network-based machine learning to the team.” Sophos further explained that “Invincea’s

1 technology will be integrated into an Endpoint Protection product and offered through Sophos  
 2 Central . . With Invincia’s [sic] technology, when we identify an attack, our Security Heartbeat  
 3 will transmit this information to several Sophos products such as our XG Firewall and SGN  
 4 Encryption and they will take the appropriate action to further protect [sic] our customers.”

5 28. On information and belief, Sophos completed its acquisition of Invincia on or  
 6 around March 22, 2017, with Sophos Inc. acquiring and holding 100% of the shares of Invincia.

7 ***Sophos Integrates Technology from the Invincia Products*** [REDACTED]

8 [REDACTED] ***and Announces End of Sale of All Invincia Products***

9 29. In January 2018, Sophos announced the availability of its Intercept X with malware  
 10 detection powered by advanced deep learning neural networks. On information and belief Sophos  
 11 integrated technology [REDACTED] into  
 12 the Sophos Intercept X product, including technology [REDACTED]

13 [REDACTED]  
 14 [REDACTED]  
 15 30. Sophos has advertised and represented to the public that it has, in fact, integrated  
 16 technology [REDACTED] into Sophos’  
 17 Intercept X product. For example, in a February 8, 2018 “Q3 FY18 Update” Sophos’ CEO Kris  
 18 Hagerman stated, “. . . In January we introduced a major new release of Intercept X, our leading  
 19 next-generation endpoint product, . . . in our new release we have not only strengthened and  
 20 expanded our lead in core anti-exploit and anti-ransomware capabilities, but we also have now  
 21 fully integrated the advanced deep-learning neural network technology of our Invincia acquisition  
 22 to combine the power of machine learning and AI to deliver unparalleled levels of detection and  
 23 prevention and with extremely low false positive rates . . . .”

24 31. On April 16, 2018—following the integration of the technology [REDACTED]  
 25 [REDACTED]—Sophos announced “the immediate end of  
 26 sale for all Invincia-related products and support.” The announcement (attached hereto as Exhibit  
 27 D) also “strongly encourag[ed] customers to consider migrating from Invincia to Sophos Intercept  
 28 X” and advertised “Intercept X [as] a comprehensive endpoint protection solution that features an



1 enhanced Invincea deep learning malware detection engine, Sophos anti-exploit technology,  
2 specific anti-ransomware functionality and more.”

3 [REDACTED]  
4 32. [REDACTED]  
5 [REDACTED]  
6 [REDACTED]  
7 [REDACTED]  
8 [REDACTED]

9 33. Beginning in Q2 2017—following Sophos’ acquisition of Invincea—[REDACTED]  
10 [REDACTED]  
11 [REDACTED]  
12 [REDACTED]  
13 [REDACTED]  
14 [REDACTED]  
15 [REDACTED]  
16 [REDACTED]

17 34. Since then, [REDACTED]  
18 [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]

22 35. [REDACTED]  
23 [REDACTED]  
24 [REDACTED]  
25 [REDACTED]  
26 [REDACTED]

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**COUNT I**  
**BREACH OF CONTRACT** [REDACTED]

36. Vir2us hereby incorporates the allegations in paragraphs 1 through 35 as if fully alleged herein.

37. [REDACTED]  
[REDACTED]

38. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

39. [REDACTED]  
[REDACTED]

[REDACTED] Sophos is also the successor-in-interest to Invincea.

40. [REDACTED]  
[REDACTED]  
[REDACTED]

41. [REDACTED]  
[REDACTED]

42. [REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]  
[REDACTED]

[REDACTED]

1 43. [REDACTED]

11 44. Vir2us hereby incorporates the allegations in paragraphs 1 through 35 as if fully  
12 alleged herein.

13 45. [REDACTED]

15 46. [REDACTED]

18 47. [REDACTED]

20 [REDACTED] Sophos is also the successor-in-  
21 interest to Invincea.

22 48. [REDACTED]

[REDACTED]

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**PRAYER FOR RELIEF**

WHEREFORE, Vir2us respectfully requests that the Court enter final judgment granting the following relief jointly and severally against the Defendants:

A. For an award of actual damages from Defendants, including compensatory and consequential damages, in an amount according to proof, plus interest which continues to accrue thereon;

B. Prejudgment and post-judgment interest;

C. For an order and award of specific performance affirmatively requiring Defendants

[REDACTED]

[REDACTED] and

D. For such other and further relief as the Court deems just and equitable.

**DEMAND FOR JURY TRIAL**

Pursuant to Federal Rule of Civil Procedure 38, plaintiff Vir2us demands a trial by jury in this action.

1 Dated: January 9, 2019

Respectfully Submitted,

2  
3 /s/ Stephen E. Noona

4 Stephen E. Noona  
5 Virginia State Bar No. 25367  
6 **KAUFMAN & CANOLES, P.C.**  
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12 Brian A.E. Smith (*pro hac vice* forthcoming)  
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